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Sectoral policy questions: preventing and combating corrupt practices and transfer of funds of illicit origin and returning such funds to the countries of origin

Crime prevention and criminal justice

Prevention of corrupt practices and transfer of funds of illicit origin

Report of the Secretary-General*

Addendum

Summary

The present addendum has been prepared by the Centre for International Crime Prevention of the United Nations Office for Drug Control and Crime Prevention, in response to General Assembly resolution 56/186 of 21 December 2001. It contains a summary of the response received from Slovenia.

* The delay in submitting the present addendum to the report of the Secretary-General was due to the late receipt of the responses.

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Measures adopted by countries for preventing and combating corrupt practices and transfer of funds of illicit origin

Slovenia

1. Slovenia has signed and ratified the Criminal Law Convention on Corruption of the Council of Europe (Official Gazette RS, No. 26/00-MP No. 7) together with the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Cooperation and Development (OECD) (Official Gazette RS, No. 01/01-MP No. 1). It has also signed the Civil Law Convention on Corruption of the Council of Europe.

2. Efforts have been also focused on committing the country to international legal standards on combating money-laundering. The ratification of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime of the Council of Europe (Official Gazette RS, MP Nos. 11/97 and 8/98, hereinafter "the Convention SE No. 141") brought to a change in the relevant national legislation. The definition of the criminal offence of money-laundering contained in article 252 of the Penal Code (Official Gazette RS, Nos. 63/94 and 23/99) was extended. Likewise, the measure of the deprivation of pecuniary advantage was also extended to include the deprivation of legal property of the offender and of related legal entities or individuals, in the counter value of the obtained pecuniary advantage. Changes in the Criminal Procedure Act were also undertaken.

3. In addressing the issue of the predicate offences of money-laundering, Slovenia opted for the so-called "all crime model", which expands the scope of the predicate offences of money-laundering so as to include all criminal offences, irrespective of their importance and the weight of their consequences. The selection of this model proved to be of particular importance in view of Slovenia's accession to the Criminal Law Convention on Corruption of the Council of Europe. According to article 13 of the Convention, in fact, States Parties are required to criminalize money-laundering originating from any criminal offences of corruption enumerated in the Convention.

4. On the basis of article 13 of the Prevention of Money Laundering Act (Official Gazette RS, No. 79/01), the Office for the Prevention of Money Laundering carries out the tasks related to the prevention and detection of money-laundering as well as other tasks such as receiving, collecting, analysing and transferring relevant data and information.

5. Regarding the seizure or confiscation of pecuniary advantage that originates from criminal offences of corruption, the offender shall be deprived of such unlawful pecuniary advantage, on the basis of a court decision that establishes the criminal offence, first by seizing the money, valuables and any other pecuniary advantage obtained by the offender or by any other recipient on the basis of a criminal offence or because of a criminal offence. Shall this not be possible for objective reasons, the court shall seize the legal property of the offender in an amount corresponding to the unlawful pecuniary advantage. In case the offender cannot be deprived of the unlawfully acquired pecuniary advantage in this way, article 96, paragraph 3, of the Penal Code authorizes the court to oblige the offender, or any person who received a pecuniary advantage, to pay a sum corresponding to

the value of the unlawfully obtained pecuniary advantage. In this context, reference should also be made to three institutes foreseen by the criminal law, which are directly related to the deprivation of unlawfully obtained pecuniary advantage: (a) the pecuniary claim of the victim or the provisional security of the claim; (b) the provisional security of the deprivation of pecuniary advantage; and (c) the seizure of objects that came into being on the basis of the criminal offence or by the criminal offence.

6. Slovenia has also indicated that, at the moment, there is no legal provision in the country that would enable a possible foreign victim (either an individual or legal entity) to repatriate funds or assets transferred by an offender from a foreign country to Slovenia as an unlawful pecuniary advantage, irrespective of the fact that the foreign country issued a request to seize the objects or the pecuniary advantage located on the territory of Slovenia. This is due to the fact that the provision of article 15 of the Convention SE No. 141, which establishes that the property seized by the requested signatory State, in accordance with its internal legislation, shall be at the disposal of the requested signatory State itself, unless otherwise agreed by the Parties concerned, is still in force. An exception to this provision is possible if the foreign victim individually enforces the above pecuniary claim before a Slovene court to be compensated for the damage that occurred to him/her due to the criminal offence, on condition that a criminal proceeding against the offender has been instituted before court in Slovenia. Thus, the possibility of repatriation of funds or assets could only be enforced within the framework of bilateral or multilateral agreements upon the adoption of appropriate international legal documents.